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several states. There are intimations to the same effect in decisions of the United States Supreme Court.⁴ But in *Pennoyer v. Neff*,⁵ that court said that it did not "mean to assert that a State may not require a non-resident entering into a partnership within its limits, or making contracts enforceable there, to appoint an agent . . . in the state to receive service of process . . . and provide upon his failure to make such appointment . . . that service be made upon a public officer designated for that purpose."

Since the automobilist is likewise entitled to enter the state as a matter of right, the New Jersey statute would seem to call for some discussion of this apparently unsettled point; but in *Kane v. New Jersey*,⁶ the Court, speaking through Mr. Justice Brandeis, was content to uphold the enactment upon the ground that "the speed of the automobile and the habits of men" rendered it reasonable in the interest of public safety, and that non-residents were not discriminated against but on the contrary were put on an equality with residents. If this, then, be a measure conferring equality upon the non-resident automobilist, a similar enactment respecting any non-resident entering the state for any purpose, or never entering it at all, must also be a measure promotive of equality. For so far as inequality goes all non-residents are clearly in the same situation. Or if we are to stress the imponderable contribution of such a measure to the public safety, a similar requirement from all transients would be undeniably productive of the same effect. It is axiomatic that danger emanates from the least suspected sources, and we may suppose that Pandora herself, to whom the responsibility for the existence of all of these perplexing problems may be directly traced, was a person of a sufficiently innocuous appearance. But what State would not wish to impose upon visits from her some such restraining influence as the New Jersey statute is credited with contemplating? In short, the considerations suggested by the court, if true, do not seem conclusive. Are the rather fragmentary remarks of the court to be taken as an endorsement and extension of what in *Pennoyer v. Neff* the court merely took pains not to deny?

C. A. R.

CRIMINAL LAW: SELF HELP: RETALIATION.—In *People v. Finali*¹ A hit B with a rock and ran inside a warehouse. B pur-

⁴ *D'Arcy v. Ketchum* (1850), 11 How. 165, 13 L. Ed. 648; *Mason v. Eldred* (1868), 6 Wall. 231, 18 L. Ed. 783; *Hall v. Lanning* (1875), 91 U. S. 160, 23 L. Ed. 271; *Sugg. v. Thornton* (1889), 132 U. S. 524, 33 L. Ed. 447, 10 Sup. Ct. Rep. 163.

⁵ Note 2, *supra*.

⁶ (Dec. 4, 1916), 242 U. S. 160, 37 Sup. Ct. Rep. 30. Cf. *Kane v. State* (1911), 81 N. J. L. 594, 80 Atl. 453, Ann. Cas. 1912-D, 237; and *Cleary v. Johnston* (1909), 79 N. J. L. 49, 74 Atl. 538.

¹ (Sept. 19, 1916), 23 C. A. D. 419, 160 Pac. 850.

sued A, but being unable to force his way inside, fired through the door and killed A. While in no jurisdiction would B have been obliged to retreat from A's non-felonious assault, this right to stand his ground did not justify him in pursuing A for the purpose of killing him.

In the course of the opinion the court said, "Had the defendant overtaken the deceased in the heat of the moment and suitably punished him for this assault, he might not have been held blameworthy." Is there a right to pursue one who has committed an assault and to inflict reasonable chastisement? The earliest view of criminal punishment was for each person to avenge, in whatever manner he thought proper, a wrong done him by another.² Retaliation was the basis of the *lex talionis*, the "eye for an eye" of the Mosaic law.³ Even in this, its crudest form, it may have found some recognition in the English law.⁴ The *Leges Henrici* state that if A fell from a tree and killed B, B's relatives could climb a tree and fall on A,⁵ and a modern parallel has been cited from the customs of Abyssinia.⁶ In modern law the claim to the right to retaliate is usually denied.⁷ One case, however, recognised such a right to a limited extent.⁸ Retaliation, in the heat of the moment may, however, reduce a homicide from murder to manslaughter.⁹ The modern retaliation is retaliation by the state as a theory of punishment, yet that theory of punishment is being discarded,¹⁰ and if abandoned as a theory of punishment by the state, should it still have any recognition as a means of self help? The suggestion of the court harkens back to the days of duelling, when honor was thought to be dearer than human life, but that institution has almost died out; the current attitude toward it is expressed by a noted writer, who says,¹¹ "It is not an institution of honor, but a horrible and barbarous custom, which a

² Cherry, *The Growth of Criminal Law in Ancient Communities*, p. 8.

³ Leviticus, 24:20.

⁴ Pollock and Maitland, *History of English Law* (2d ed.), p. 471; cf. p. 489.

⁵ Leg. Hen. 88, § 9.

⁶ Parkyns, *Life in Abyssinia* (1868), p. 366, cited in 2 Pollock and Maitland, *History of English Law* (2d ed.), p. 471.

⁷ *Regina v. Driscoll* (1841), Car. & M. 212, 41 E. C. L. 120; *State v. Burton* (1900), 2 Pen. (Del.) 472, 47 Atl. 619; *State v. Brooks* (1912), 3 Boyce, 203, 84 Atl. 225; *State v. Black* (1915), 86 N. J. Law, 520, 93 Atl. 91.

⁸ *People v. Pearl* (1889), 76 Mich. 207, 42 N. W. 1109, 4 L. R. A. 709, 15 Am. St. Rep. 304.

⁹ *Beasley v. State* (1886), 64 Miss. 518, 8 So. 234; *Franklin v. State* (1892), 30 Tex. App. 628, 18 S. W. 468.

¹⁰ Tarde, *Penal Philosophy*, 552, "If retaliation, as there can be no doubt, is a conception which has served its purpose, let us scorn it verbally, let us forget it in our laws and consequently either let us drive the scaffold from its last foothold, or let us cease to restrict the menace of it to murder and assassination."

¹¹ Rousseau, in *Encyc. Britt.* (11th ed.), Vol. 8, p. 541.

courageous man despises and a good man abhors." The court's suggestion is not even supported by Von Jhering, an outspoken advocate of self help, whose most radical statement is,¹² "The defense of one's concrete legal rights, when those rights have been attacked, is a duty not only to himself but also to society." It is to be noticed that he says, "legal rights," but a person has no legal right to pursue and punish a person after all danger to himself is gone.¹³ One of the ends of the law is to prevent private war. Dean Pound says,¹⁴ "A condition in which self help and private war are the normal processes of society is the very antithesis of the legal order." The remark of the court that a person who has been assaulted may overtake the assailant in the heat of the moment and suitably chastise him, not only has little support either in authority or on principle, but would be a step backward in legal development.

S. F. H.

EVIDENCE: BOOKS OF ACCOUNT: LAYING FOUNDATION.—At a time when the social aspects of the law are being emphasized and developed, that which tends more closely to unite law and legal procedure with practical common sense is particularly welcome. This is especially true of the rules for laying the foundation for the introduction in evidence of account books.¹ While the business man has implicit faith in the correctness of his books and the commercial world as a whole relies upon them, they are not generally receivable in evidence until proved by a witness having personal knowledge of the facts recorded therein.² If the bookkeeper thus qualified is dead or absent from the jurisdiction the books would nevertheless be received, because of the necessity of the situation.³

In most cases, however, the entrant making up the books relies solely on the oral or written reports of others, having himself no personal knowledge of the transactions entered. These reports are hearsay.⁴ Therefore, the original observers themselves must verify them,⁵ unless possibly, such proof is excused by reason

¹² Von Jhering, "Struggle for Law" (Lalor's translation, 2d ed.), p. 76.

¹³ *Supra*, n. 7.

¹⁴ "Interest of Personality," 27 *Harvard Law Review*, 198.

¹ 10 R. C. L. 1174. See also, 1 *California Law Review*, 377.

² Wigmore, *Evidence*, § 1530.

³ *American Surety Co. v. Pauly* (1896), 72 Fed. 470; *Stanley v. Wilkerson* (1897), 63 Ark. 556, 39 S. W. 1043; *Meyer v. Brown* (1902), 130 Mich. 449.

⁴ *Swan v. Thurman* (1897), 112 Mich. 416, 70 N. W. 1023; *San Francisco Teaming Co. v. Gray* (1909), 11 Cal. App. 314, 104 Pac. 999; *Chandler v. Robinett* (1913), 21 Cal. App. 333, 130 Pac. 314.

⁵ *Kerns v. McKean* (1888), 76 Cal. 87, 18 Pac. 122; *People v. Mitchell* (1892), 94 Cal. 550, 29 Pac. 1106; *Butler v. Estrella Raisin Vineyard Co.* (1899), 124 Cal. 239, 56 Pac. 1040; *San Francisco Teaming Co. v. Gray*, *supra*, n. 4; *Chandler v. Robinett*, *supra*, n. 4. See also, 52 L. R. A. 595, n.